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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,642

04/16/2004

Willic Bryant

10170-004-42229

2292

23489 7590 12/21/2006
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EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/21/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/826,642

Applicant(s)

BRYANT ET AL.

Examiner

Harry A. Grosso

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 43-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Terminal Disclaimer filed in response to the nonstatutory double patenting rejection in view of U.S. Patent No. 6,279,771 has been received with the amendment filed October 5, 2006.

The remarks filed with the amendment of October 5, 2006 indicated that a Terminal Disclaimer was also being filed in response to the nonstatutory double patenting rejection in view of U.S. Patent No. 6,722,522; however, the Patent Office does not have a record of this Terminal Disclaimer being received with the amendment.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 43-51 rejected under 35 U.S.C. 102(a and e) as being anticipated by Doyle et al (5,628,426).

Regarding claims 43, 47 and 48, Doyle et al discloses a cooking vessel (Figures 1-9, column 3, lines 36-47) made from a sheet of aluminum or aluminum alloy with no other metallic, aluminum or aluminum alloy layers (column 5, lines 8-14) having an

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embossed patterned surface (column 4, line 6 to column 5, line 1) for supporting a food product with lower portions (22, 222) raised portions (114, Figure 9) that form a substantially planar surface. The raised portions extend generally vertically from the lower portions and the raised and lower portions form air pockets or air channels. Doyle et al indicates the surface may be provided with a non-stick coating but this is not a required element as is shown by Doyle et al in their claim 1.

Regarding claims 44-46 and 49-51, Doyle et al discloses air pockets or channels and is capable of being used in the intended manner, i.e., providing air circulation or air flow during cooking and enhancing heat transfer during cooking. There is no structure in Doyle et al which would prohibit such functional intended use (see MPEP 2111).

3. Claims 43-51 rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al (3,098,597).

Regarding claims 43, 47 and 48, Johnson et al discloses a cooking vessel made from a sheet of aluminum or aluminum alloy with no other metallic, aluminum or aluminum alloy layers having a patterned surface capable of supporting a food product (Figures 1-3, column 3, lines 2-7) with raised portions (5) that form a substantially planar surface. The raised portions extend generally vertically from the lower portions and the raised and lower portions form air pockets.

Regarding claims 44-46 and 49-51, Johnson et al discloses air pockets or channels and is capable of being used in the intended manner, i.e., providing air circulation or air flow during cooking and enhancing heat transfer during cooking.

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There is no structure in Johnson et al which would prohibit such functional intended use (see MPEP 2111).

4. Claims 43-51 rejected under 35 U.S.C. 102(e) as being anticipated by Sheu (5,740,937).

Regarding claims 43, 47 and 48, Sheu discloses a cooking vessel (2, Figure 4, column 2, lines 48-52) made from a sheet of aluminum or aluminum alloy with no other metallic, aluminum or aluminum alloy layers (column 2, line 24) having a patterned surface for supporting a food product with lower portions (22, 222) raised portions (221) that form a substantially planar surface. The raised portions extend generally vertically from the lower portions and the raised and lower portions form air pockets or air channels (column 2, lines 34-38). Sheu discloses the raised portions (221) are raised from the top side of the sheet (column 2, lines 35-37).

Regarding claims 44-46 and 49-51, Sheu discloses air pockets or channels and is capable of being used in the intended manner, i.e., providing air circulation or air flow during cooking and enhancing heat transfer during cooking. There is no structure in Sheu which would prohibit such functional intended use (see MPEP 2111).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 43-51 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,722,522 in view of Johnson et al (3,098,597), Sheu (5,740,937), or Doyle et al (5,628,426). Johnson, Sheu and Doyle et al teach the use of a sheet of aluminum or aluminum alloy with no other metallic, aluminum or aluminum alloy layer and the raised portions extending generally vertically from the lower portions and it would be obvious to one of ordinary skill in the art to incorporate these features since they are known in the art.

Response to Arguments

7. Applicant's arguments filed October 5, 2006 have been fully considered but they are not persuasive. Applicant argues that Johnson et al does not disclose air pockets or air channels required by the claims or the patterned surface to support a food product. In response, Johnson discloses a substantially planar, patterned surface formed by raised portions (5) capable of supporting a food product. The raised portions extend generally vertically from lower portions and the raised and lower portions form air pockets. The structure of Johnson meets the limitations of the claims.

8. Applicant argues that Sheu does not disclose air pockets or air channels required by the claims or the patterned surface to support a food product and does not provide a vessel with an improved surface that forms pockets between the food product or other article that allow air to flow and circulate under the surface of the food item or other article. In response, Sheu discloses a patterned surface for supporting a food product with lower portions (22, 222) and raised portions (221) that form a substantially planar surface. The raised portions extend generally vertically from the lower portions and the raised and lower portions form air pockets or air channels (column 2, lines 34-38). The air pockets or air channels would allow air to flow and circulate under the surface of a food item as can be seen in Figure 4. The structure of Sheu meets the limitations of the claims.

9. Applicant has traversed the rejection of claims 43-51 as anticipated by Doyle et al but has provided no argument in support of the traversal and has failed to point out how the claims of the instant invention are patentable over Doyle et al.

10. Applicant argues that the claims, as amended, included features not present in the prior art. In response, the amended claims recite an "embossed sheet of aluminum or aluminum alloy". Doyle et al discloses the use of an embossed sheet of aluminum or aluminum alloy (column 4, line 67 to column 5, line 1). With regard to Johnson et al and Sheu, the Merriam-Webster Online Dictionary defines emboss as "to raise the surface of into bosses or to raise in relief from a surface." By this definition, the sheets of Johnson and Sheu meet the limitation of an embossed sheet as claimed.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

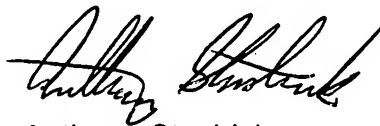
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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